1772.

SUPREME COURT OF THE UNITED STATES.

No. 68.

GERRIT SCHIMMELPENNICK ET AL., PLAINTIFFS,

VERSUS

JOSIAH AND PHILIP TURNER.

ON A CERTIFICATE OF DIVISION IN OPINION OF THE JUDGES OF THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MARYLAND.

INDEX.

	Original.	Print.
Writ,	1	2
Declaration,	2	2
Defendants' plea,	10	7
Issue joined,	11	7
Defendants' first bill of exceptions,	11	7
Deposition of John C. Delprat,	12	8
A.—Receipt of Josiah Turner & Co.,	14	8
B. " " "	14	9
C. " " "	15	9
D. and E.—Two drafts by Turner & Co. on Delprat,	15	9
Letter, June, 1822, Delprat to Turner & Co.,	16	9
" July, " Delprat to Philip Turner,	16	10
" " " Philip Turner to Delprat,	17	10
Commission to take depositions, &c.,	18	11
Interrogatories, &c.,	21	12
Certificate of Fabius and others,	22	13
Deposition of H. C. Fabius,	23	13
" H. E. De Leeuw,	25	14
" H. Moss,	27	15
" N. J. ten Bosch,	28	16
" G. Boom,	29	16
Account of sales, &c., 100 hhds. of tobacco,	33	18
" " 30 " "	35	20
" " 60 " "	37	22
" " 47 " "	39	24
" " 29 " "	41	26
" " 21 " "	43	28
" " 100 " "	45	30
Account current, &c.,	47	33
" "	49	34
Point of division, &c.,	53	37
Clerk's certificate,	54	37

THE UNITED STATES OF AMERICA, DISTRICT OF MARYLAND, to wit:

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the eighth day of December, in the year of our Lord one thousand eight hundred and twenty-eight, present, the Honorable Gabriel Duvall, one of the Associate Justices of the Supreme Court of the United States, Elias Glenn, Judge of Maryland district, Nathaniel Williams, Esquire, Attorney, Thomas Finley, Esquire, Marshal, Philip Moore, clerk.

Among other were the following proceedings, to wit:

GERRIT SCHIMMELPENNICK and JAN ADRIAN TOE LAER,
versus
JOSIAH TURNER and PHILIP TURNER, surviving partners of William Turner.

Be it remembered, that heretofore, to wit, on the twenty-ninth day of April, in the year of our Lord one thousand eight hundred and twenty five, the said Gerrit Schimmelpennick and Jan Adrian toe Laer, by John Glenn and David Stewart, their attorneys, prosecuted and sued forth out of the circuit court here, the writ of the United States of America of capias ad respondendum, directed to the Marshal of the district of Maryland, in the words and of the tenor following, to wit:

UNITED STATES OF AMERICA, MARYLAND DISTRICT, to wit:

To the Marshal for Maryland District, greeting:

We command you that you take Josiah Turner and Philip Turner, surviving partners of William Turner, citizens of Maryland, merchants, if they shall be found in your district, and that them so taken you safe keep, so that you have their bodies before the judges of the circuit court of the United States for the fourth circuit, in and for the Maryland district, at the masonic hall in the city of Baltimore, on the eighth day of May next, to answer unto Gerrit Schimmelpennick and Jan Adrian toe Laer, aliens and subjects of the king of Holland, merchants, trading under the firm of N. and J. and R. Vanstaphorst, of a plea of trespass on the case, &c. Hereof fail not at your peril, and have you then and there this writ. Witness the Honorable John Marshall, chief justice of our Supreme Court, the twenty-first day of March, in the year of our Lord one thousand eight hundred and twenty-five.

PHILIP MOORE, *Clk. Circ't. Ct.* [SEAL.]

J. G. and D. S. Issued 29th day of April 1825.

And the aforesaid Gerrit Schimmelpennick and Jan Adrian toe Laer, on the day of prosecuting and suing forth of the aforesaid writ, declared against the said Josiah Turner and Philip Turner in the plea aforesaid, in form following, to wit:

THE UNITED STATES OF AMERICA, MARYLAND DISTRICT, to wit:

Josiah Turner and Philip Turner, surviving partners of William Turner, citizens of Maryland, merchants, were attached to answer unto Gerrit Schimmelpennick and John Adrian toe Laer, aliens and subjects of the king of Holland, merchants, trading under the firm of N. and J. and R. Vanstaphorst, of a plea of trespass on the case, &c. And thereupon the said

775.

plaintiffs, by J. Glenn, their attorney, complain; for that, whereas the said defendants, merchants and co-partners, trading under the firm of Josiah Turner & Co. in the lifetime of said William, on the first day of March, in the year of our Lord eighteen hundred and twenty-one, to wit, at the district aforesaid, were indebted to the said plaintiffs in the sum of thirteen thousand dollars, for the work and labor, care, diligence and attendance of the said plaintiffs, by the said plaintiffs before that time done, performed and bestowed, in and about the business of the said defendants, for the said defendants, and at their special instance and request; and also for divers materials and other necessary things by the said plaintiffs, before that time found and provided, and used and applied in and about that work and labor for the said defendants, and at their special instance and request; and also in the further sum of thirteen thousand dollars, for divers goods, wares and merchandise, by the said plaintiffs before that time sold and delivered to the said defendants, and at their special instance and request; and also in the further sum of thirteen thousand dollars, for money by the said plaintiffs before that time lent and advanced to, and paid, laid out and expended for the said defendants, and at their like special instance and request; and also in the further sum of thirteen thousand dollars, for other money by the said defendants before that time had and received to and for the use of the said plaintiffs; and, being so indebted, the said defendants in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook, and then and there faithfully promised the said plaintiffs the said several sums of money in this count mentioned, when the said defendants should be thereunto afterwards requested.

And whereas, also, the said defendants, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, accounted with the said plaintiffs of and concerning divers other sums of money, before that time due and owing from the said defendants to the said plaintiffs, and then being in arrear and unpaid; and upon such accounting the said defendants were then and there found to be in arrear and indebted to the said plaintiffs in another large sum of money, to wit, in the further sum of thirteen thousand dollars; and being so found in arrear and indebted, the said defendants in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook and faithfully promised the said plaintiffs to pay the said plaintiffs the last mentioned sum of money, when the said defendants should be thereto afterwards requested. Nevertheless, the said defendants, not regarding their said several promises and undertakings, have not, as yet, paid the aforesaid several sums of money, or either of them, or any part of either of them to the said plaintiffs, (although so to do the said defendants were requested by the said plaintiffs, afterwards, to wit, on the day and year aforesaid, and often afterwards, to wit, at the district aforesaid,) but to pay the same the said defendants have hitherto wholly neglected and refused, and do still neglect and refuse so to do, to the damage of the said plaintiffs twenty-five thousand dollars, and therefore they bring suit, &c.

J. GLENN,
D. STEWART, } *Pl'tffs. Att'ys.*

Copies of which said declaration were made and sent with the said writ to the marshal of the Maryland district aforesaid; at which mentioned eighth day of May, in the year of our Lord one thousand eight hundred

and twenty-five, being the day of the return of the aforegoing writ, comes into the circuit court here the said Gerrit Schimmelpennick and Jan Adrian toe Laer, by their attorneys aforesaid, and the marshal of the Maryland district aforesaid, to wit, Paul Bentalou, gentleman, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

"Cepi Josiah, non est Philip.

PAUL BENTALOU, *Marshal.*"

And the said Josiah Turner being called, appears in court here, by Thomas Kell and Nathaniel Williams, his attorneys; and thereupon, on motion of the said Gerrit Schimmelpennick and Jan Adrian toe Laer, by their attorneys aforesaid, it is ruled by the court here, that the said Josiah Turner give special bail in the plea aforesaid, or in default thereof be committed to the custody of the marshal of the district aforesaid: whereupon, a certain William P. Compton, of the said district, present here in court in his proper person, (with the consent of the said Gerrit Schimmelpennick and Jan Adrian toe Laer, by their attorneys aforesaid,) undertakes for the said Josiah Turner, that in case the aforesaid Gerrit Schimmelpennick and Jan Adrian toe Laer shall recover against the said Josiah Turner in the plea aforesaid, or that the said Josiah Turner shall be therein legally convict, that then the said Josiah Turner shall pay the condemnation of the court thereupon, or render his body to the custody of the marshal of the district aforesaid, in satisfaction thereof, or that he, the said William P. Compton, will do the same for him.

And the said Josiah Turner, by his attorneys aforesaid, prays the court here, that the said Gerrit Schimmelpennick and Jan Adrian toe Laer may be ruled to give security for costs in the plea aforesaid: whereupon it is ruled by the court here, that the said Gerrit Scimmelpennick and Jan Adrian toe Laer give security for the costs of suit in the plea aforesaid, by the eighth day of December next; and it is said to the said Gerrit Schimmelpennick and Jan Adrian toe Laer, that if they do not give security by the day aforesaid, judgment will be rendered against them by default; the same day is given to the said Josiah Turner there, &c. And the said Philip Turner does not come; thereupon the said Gerrit Schimmelpennick and Jan Adrian toe Laer, by their attorneys aforesaid, prosecuted and sued forth out of the circuit court here an alias writ of capias ad respondendum, to the marshal of the district aforesaid directed, in the words and of the tenor following, to wit:

UNITED STATES OF AMERICA, DISTRICT OF MARYLAND, to wit:

To the Marshal for Maryland District, greeting:

We command you, as you were heretofore commanded, that you take Philip Turner, surviving partner of William Turner, citizen of the State of Maryland, merchant, if he shall be found in your district, and that him so taken you safe keep, so that you have his body before the judges of the circuit court of the United States for the fourth circuit in and for the Maryland district, at the masonic hall in the city of Baltimore, on the eighth day of December next, to answer unto Gerrit Schimmelpennick and Jan Adrian toe Laer, aliens and subjects of the king of Holland, merchants,

774.

trading under the firm of N. and J. and R. Vanstaphorst, of a plea of trespass on the case, &c. Hereof fail not at your peril, and have you then and there this writ. Witness the Honorable John Marshall, chief justice of our Supreme Court, the fifteenth day of March, in the year of our Lord eighteen hundred and twenty-five.

PHILIP MOORE, *Clk. Circ't. Ct.*

J. G. and D. S. Issued 18th day of June, 1825.

At which said eighth day of December, in the year of our Lord one thousand eight hundred and twenty-five, and the return day of the last aforesaid writ, come again into the circuit court here, the said Gerrit Schimmelpennick and Jan Adrian toe Laer, by their attorneys aforesaid, and the marshal of the district aforesaid, to whom the said last mentioned writ was in form aforesaid directed, makes return thereof to the court here thus endorsed, to wit;

"Cepi, copy left, 110 miles.

PAUL BENTALOU, *Marshal.*"

And the said Philip Turner, being called, appears in court here by Nathaniel Williams, his attorney; and thereupon, on motion of the said Gerrit Schimmelpennick and Jan Adrian toe Laer, by their attorneys aforesaid, it is ruled by the court here, that the said Philip Turner give special bail in the plea aforesaid, or, in default thereof, be committed to the custody of the marshal of the district aforesaid; whereupon, the said Philip Turner, by his attorney aforesaid, (with the consent of the said Gerrit Schimmelpennick and Jan Adrian toe Laer, by their attorneys aforesaid,) files in court here a bail piece, in the words and of the tenor following, to wit:

UNITED STATES.

You, Henry Turner and George Hayden, jun., do jointly and severally acknowledge yourselves special bail for Philip Turner, at the suit of Gerrit Schimmelpennick and Jan Adrian toe Laer, in a plea of trespass on the case, &c., brought by the said Gerrit Schimmelpennick and Jan Adrian toe Laer against the said Philip Turner, in the circuit court of the United States for the district of Maryland, to be held at the city of Baltimore on the eighth day of December next. They acknowledge themselves content therewith, this twentieth day of August, in the year of our Lord one thousand eight hundred and twenty-five.

Acknowledged before the subscribers, two of the justices of the peace of the State of Maryland for Saint Mary's county.

HENRY ALVEY, *J. P.*, [SEAL.]
ROBERT TIPPETT, *J. P.*, [SEAL.]

I, Philip Turner, the defendant in the above cause, authorize and appoint Nathaniel Williams, Esq., an attorney in the aforesaid court, to appear for me in the above action. Given under my hand and seal, this twentieth day of August, in the year eighteen hundred and twenty-five.

PHILIP TURNER, [SEAL.]

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of said parties and their attorneys aforesaid,

and by order of the court here thereon, is further continued until the eighth day of May next.

At which said eighth day of May, in the year of our Lord one thousand eight hundred and twenty-six, come again into the circuit court here the parties aforesaid, by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the eighth day of December next.

At which said eighth day of December, in the year of our Lord one thousand eight hundred and twenty-six, come again into the circuit court here the parties aforesaid, by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the eighth day of May next.

At which said eighth day of May, in the year of our Lord one thousand eight hundred and twenty-seven, come again into the circuit court here the parties aforesaid, by their attorneys aforesaid.

And the said Gerrit Schimmelpennick and Jan Adrian toe Laer, by their attorneys aforesaid, pray the court here that commission may issue to the city of Amsterdam to examine evidences in this cause, and that the depositions returned with the said commission may be read in evidence at the trial hereof, and it is granted them.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the eighth day of December next.

At which said eighth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, come again into the circuit court here the parties aforesaid, by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the eighth day of May next.

At which said eighth day of May, in the year of our Lord one thousand eight hundred and twenty-eight, come again into the circuit court here the parties aforesaid, by their attorneys aforesaid.

And the said Gerrit Schimmelpennick and Jan Adrian toe Laer, by their attorneys aforesaid, pray the court here that commission may issue to the city of New York, in the State of New York, to examine evidences in this cause, and that the depositions returned with the said commission may be read in evidence at the trial hereof, and it is granted them.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the eighth day of December next.

At which said eighth day of December, in the year of our Lord one thousand eight hundred and twenty-eight, come again into the circuit court here the parties aforesaid, by their attorneys aforesaid.

And the said Gerrit Schimmelpennick and Jan Adrian toe Laer, by their attorneys aforesaid, file in court here the following motion and notice:

775.

SCHIMMELPENNICK and TOE LAER, *versus* TURNERS. } *In the Circuit Court United States, 4th circuit, Maryland district.*

The plaintiffs, by their counsel, move the court to require the defendants to produce all the original letters of the plaintiffs to the defendants, which bear date as follows; in the year 1820, April 11, May 23, June 7, June 20, July 1. July 19, September 13, November 16, December 4, December 29; and in the year 1821, February 20, May 18, July 22, July 31, September 24, November 10, and December 9; and on default of such production, to give judgment against the defendants.

JNO. GLENN, D. STEWART, } *For Plaintiffs.*

And the said Josiah Turner and Philip Turner, by their attorneys aforesaid, come and defend the wrong and injury when, &c., and for plea to the action aforesaid, say, that they, together with the said William, whom they have survived, did not undertake and promise in manner and form as the said Gerrit Schimmelpennick and Jan Adrian toe Laer have above thereof complained against them, and of this they put themselves upon the country; and the said Gerrit Schimmelpennick and Jan Adrian toe Laer in like manner, &c.

Therefore let a jury thereon appear before the court here immediately, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c.

Whereupon for trying the issue aforesaid, it is ordered by the court here, that twenty persons from the pannel of petit jurors, returned to the court here by the marshal of the district aforesaid, be drawn by ballot; and thereupon the twenty persons being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, the remaining twelve persons being called come, to wit:

John Hoffman, Thomas Hutchins, Richard K. Watts, Samuel Moore, James McLanahan, John M. Wyse, George Bradford, Baltzer Schaeffer, John Pearce, David Clendennin, James Mosher, Joseph Robinson, who being empannelled and sworn to say the truth in the premises.

The defendants, by their attorneys aforesaid, tendered to the court here their first bill of exceptions, which was by the court here signed and sealed, and which is in form following, to wit:

Defendants' first Exception.

GERRIT SCHIMMELPENNICK and JAN ADRIAN TOE LAER,
versus
JOSIAH TURNER and PHILIP TURNER.

In order to support the issue on the part of the plaintiffs, they offered to read in evidence the testimony taken before Judge Oakley, in New York, as delivered by a certain John C. Delprat.

Circuit Court of the United States for the fourth circuit, in and for the Maryland district.

Between Gerrit Schimmelpennick and Jan Adrian toe Laer, plaintiffs, and Josiah Turner and Philip Turner, defendants.

CITY AND COUNTY OF NEW YORK, ss.

John C. Delprat, residing in the city of New York, more than one hun-

dred miles from the city of Baltimore, being produced as a witness for the said plaintiffs, and being sworn and examined, doth depose as follows: That he is aged about thirty-nine years, and resides in the city of New York. That during the years 1819, 1820, 1821, and 1822, he was agent at Baltimore of the above named plaintiffs, whose business there was conducted under the name and style of N. and J. and R Van Staphorst. That the papers hereto annexed, marked A, B, and C, are in his hand writing, and that the signature "Josiah Turner & Co.," to each of them, is in the handwriting of Josiah Turner, one of the defendants, according to his knowledge and belief. That he paid to the said defendants the several sums of money mentioned in the said receipts, at the times, and on the account, and for the purposes therein expressed. That he also paid for the said defendants two certain drafts, hereto annexed, marked D and E, at the times the same fell due, amounting together to two thousand dollars, which money was paid for the said defendants, as an advance to them upon shipments of tobacco, made by them and consigned to the plaintiffs at Amsterdam. That during the years 1819, 1820, 1821, and 1822, the firm of Josiah Turner & Co., was composed of the defendants Josiah Turner and Philip Turner, as far as he knew and believed, and that he always dealt with the said defendants as composing the said firm. That it is his impression that the tobacco mentioned in the annexed papers B and C was not of as good quality as the samples, at that time shewn to him by the defendants.

That he did, on or about the 6th day of March, 1820, endorse a draft, drawn by the defendants on the plaintiffs, for ten thousand guilders, which draft the defendants sold to Frederick C. Graff, and it was afterwards paid by the plaintiffs at Amsterdam, as the draft was never returned by the plaintiffs; that said draft was endorsed by him as the agent of the plaintiffs, and the amount of it was to be debited by the plaintiffs to the defendants in their account at Amsterdam.

That he has certainly heretofore delivered or sent to the said defendants, and on or about the 8th day of June, 1822, an account current of the sales of the tobacco sent to him by the plaintiffs, and that the annexed paper, marked F, is a copy of two letters written by him to the defendants, at the times they respectively bear date; and that the paper annexed, marked G, is an original letter received by him, and is written and signed by Philip Turner, one of the defendants.

That during the years 1819, 1820, and 1821, he was acquainted with the market for tobacco in Europe, particularly in Amsterdam. That the prices varied too much according to quality to give any precise quotation, sometimes from 20 to 30 per cent. That the quality of the tobacco sent by the defendants, was never such as to command a high price, or any thing like a high price, and that his general impression is that he was much deceived as to the value of the defendants' tobacco, and that the quality was by no means good.

JNO. C. DELPRAT.

Sworn this 10th day of December, 1828, before me.

THOS. J. OAKLEY.

A.

Received of Mr. John C. Delprat three thousand dollars, being an advance on a shipment of tobacco to be made for our account and risque to Amsterdam, consigned to Messrs. N. and J. and R. Vanstaphorst, per ship

770.

Massasoit, now loading for that port, which said sum is to be debited our account on the 17th January next, at the rate of exchange of that day between London and Amsterdam, and one quarter per cent. brokerage. Baltimore, 17th December, 1819. (Duplicate.)

$3,000. JOSIAH TURNER & CO.

B.

Received, Baltimore, 17th May, 1820, of Mr. John C. Delprat, for account of Messrs. N. and J. and R. Vanstaphorst, three thousand three hundred dollars, being an advance on our shipment of fifty hogsheads of tobacco, per ship Jason, which said sum is to be charged us this day at the rate of thirty-eight cents per guilder, and ¼ for brokerage, and for which duplicate receipts have been given.

$3,300. JOSIAH TURNER & CO.

C.

Received, Baltimore, July 22d, 1820, of Mr. John C. Delprat, for account of Messrs. N. and J. and R. Vanstaphorst, three thousand dollars, being an advance on fifty hogsheads of tobacco, shipped by us to Amsterdam in the ship Massasoit, which advance is to be debited us on the 22d October, at the rate of 37½ cents per guilder and ¼ for brokerage.

(Duplicate.) JOSIAH TURNER & CO.

$3,000, at 37½.

D.

$500 Dollars. CHAPTICO, *January 18th*, 1820.

Ninety days after date, please pay to William Stewart, or order, five hundred dollars for value received, and charge the same to account of

Your obedient servants,

JOSIAH TURNER & CO.

MR. JOHN C. DELPRAT, *Baltimore.*

17—20 April.

Accepted, JOHN C. DELPRAT.

Endorsed, WM. STEWART.

E.

$1,500 Dollars. BALTIMORE, *December 18th*, 1819.

MR. JOHN C. DELPRAT;

Ninety days after date, please pay to Gerard T. Hopkins, or order, fifteen hundred dollars for value received.

JOSIAH TURNER & CO.

Accepted for fifteen hundred dollars, JOHN C. DELPRAT.

Endorsed, GERARD T. HOPKINS.

F.

(Copy of a letter dated 8th June, 1822, from John C. Delprat to Messrs. Josiah Turner & Co.)

GENTLEMEN: I enclose you your account current with Messrs. N. and J. and R. Vanstaphorst, received a few days since.

Balance due them, - - - - -	f. 32,460 19
Less proceeds 50 hhds. tobacco, - - -	5,514 00
	f. 26,946 19

against which, if my memory serves me right, 50 hhds. of tobacco are unsold, but as their proceeds, at the prices in Europe for this quality of tobacco, can never cover the above amount, it will become necessary to make them a remittance, or a payment to me here, which ever is most convenient. Your early attention to this is requested, as my instructions from the above house is very strict and I must comply with them.

The answer to the above is hereby sent on, but it is signed by Philip Turner, no place where dated, but although dated the 6th July was not received, as per post-mark, until the 19th, and answered as follows:

BALTIMORE, 19*th July*, 1822.

MR. PHILIP TURNER: I have this moment received your letter of the 6th July, though the post-mark shews it was only put in on the 19th of this month. I do not know from where it was written, as no place is mentioned. The business of the house of N. and J. and R. Vanstaphorst is entirely with Messrs. Josiah Turner & Co., as a firm, and as individuals I hold them liable for the amount due. It is my earnest wish to arrange the matter in a friendly manner; every thing in my power to effect this will be done. Should I not succeed in obtaining redress in this manner, I can only state, that on the other hand nothing will be left undone to compel payment of the debt; it is now left to Messrs. Turner & Co. to choose which method they prefer.

Yours,

JNO. C. DELPRAT.

G.

July 6th, 1822.

MR. JNO. C. DELPRAT.

Sir; Very soon after I received your letter of the 18th June I took occasion to inform you verbally, that until I should see my brother I could not answer it, as I was not sufficiently acquainted with the business to enable me to do so. I now have only to say, that I intend going to my brother's this week, and upon my return I shall be enabled to say what we may think of the demand your letter makes upon us, but my impression is that there has been some great error committed on the part of your house in Amsterdam.

Yours, &c.

PHILIP TURNER.

But the defendants, by their counsel, objected to the reading so much of the deposition as contains copies of two letters alleged to have been written by the said Delprat to the defendants, bearing date, one of them on the 8th of June, 1822, and the other on the 19th of July, 1822, (the plaintiffs having given due notice to produce the originals of said letters,) which objection the court overruled and permitted said evidence to go to the jury, to prove a demand by the plaintiffs upon the defendants in this cause. To which opinion the defendants prayed by their counsel leave to except, and that the court here would sign and seal this their exception, which is accordingly done this 26th day of December, 1828.

G. DUVALL, [SEAL.]
ELIAS GLENN, [SEAL.]

And upon the trial aforesaid the following question occurred, upon which the opinion of the said judges of the circuit court were opposed.

GERRIT SCHIMMELPENNICK and JAN ADRIAN TOE LAER, *versus* JOSIAH TURNER and PHILIP TURNER. } 777. *Action on the case.*

At the trial of this cause the plaintiffs, to support the issue on their part, read in evidence to the jury the following deposition of John C. Delprat, and the exhibits thereunto annexed.

(Herein before inserted in the defendants' first exception.)

And also read in evidence to the jury the following commission, depositions, and exhibits thereto annexed.

THE UNITED STATES OF AMERICA, DISTRICT OF MARYLAND, to wit:

To Claude D. Cromelin, Frederick W. Karthaus, Thomas Parker, and Pierre Voute, Esquires, greeting:

Be it known that you are appointed commissioners to examine evidences in a cause now depending in the circuit court of the United States for the fourth circuit, in and for the Maryland district, between Gerrit Schimmelpennick and Jan Adrian toe Laer, plaintiffs, and Josiah Turner and Philip Turner, surviving partners of William Turner, defendants; therefore you, or any three or two of you, are requested, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that at such time and place as to you, or any three or two of you, shall seem convenient, you cause to come before you, or any three or two of you, all such evidences as shall be named or produced to you, or any three or two of you, by either the plaintiffs or defendants; and that you, or any three or two of you, examine them upon their corporal oaths, to be by you, or any three or two of you, administered, upon the Holy Evangely of Almighty God, touching their knowledge or remembrance of any thing that may relate to the cause aforesaid; and having reduced the depositions of the witnesses so taken by you, or any three or two of you, into writing, you send the same, with this commission, closed, under your, or any three or two of your hands and seals, to the said circuit court with all convenient speed. Witness the honorable John Marshall, chief justice of our Supreme Court, the sixteenth day of March, in the year of our Lord one thousand eight hundred and twenty-seven.

PHILIP MOORE, *Clk. Circ't. Ct.*

D. S. and J. G. Issued 29th May, 1827.

Commissioners' Oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties, take the examinations and depositions of all and every witness and witnesses, produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now, or which may hereafter, before the said commission is closed, be produced to, or left with you by either party. So help you God.

Clerk's Oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down and transcribe the depositions of all and every the witness and witnesses, produced before and examined by the commissioners, or any three or two of them, named in the commission

hereunto annexed, as far forth as you are directed and employed by the said commissioners, or any three or two of them, to take, write down and transcribe the said depositions or any of them. So help you God.

The execution of this commission appears in certain schedules hereunto annexed.

CLAUDE D. CROMELIN,
F. W. KARTHAUS.

To the Honorable the Justices of the Circuit Court for the fourth circuit of the United States of America, in and for the district of Maryland.

GENTLEMEN: We, the acting commissioners named in the annexed commission, do hereby certify to the honorable the circuit court for the fourth circuit of the United States of America, in and for the district of Maryland, that in obedience to the said commission, (after having taken the oath prescribed,) we have executed the said commission, by taking the depositions of the five witnesses by us examined and hereinafter named. Witness our hands and seals, this fifth day of April, in the year of our Lord one thousand eight hundred and twenty-eight.

CLAUDE D. CROMELIN, [SEAL.]
F. W. KARTHAUS, [SEAL.]

Interrogatories to be propounded to witnesses to be examined in a certain civil cause now pending in the circuit court of the United States for the fourth circuit, in and for the district of Maryland, wherein Gerrit Schimmelpennick and Jan Adrian toe Laer are plaintiffs, and Josiah Turner and Philip Turner are defendants, on the part and behalf of the plaintiffs, as follows:

First interrogatory. Have you any knowledge of advances of money made by the plaintiffs in this cause to the defendants? if so, state upon what account, at what time, and to what amount such advances were made?

Second interrogatory. Have you any knowledge of shipments of tobacco made by the defendants to the plaintiffs? if so, state at what time and to what amount such shipments were made?

Third interrogatory. What were the current prices of tobacco in Amsterdam in the years 1820, 1821 and 1824, and what periods in such years were marked by any peculiar rise or depression in the price of that article? state fully your knowledge herein.

Fourth interrogatory. State if you are a clerk of the plaintiffs, and if so, do you or do you not know of the sales of all the tobaccoes shipped by the defendants to the plaintiffs? if so, state when it, and each parcel of it was sold, the prices and credits, and please annex a full account sales made out from your own knowledge of the business.

Fifth interrogatory. Look at the certificate now shown to you, marked A, and state whether you have any knowledge or not of the said certificate, and under what circumstances of examination and experience said certificate was given.

Sixth interrogatory. Of what persons does the firm of N. and J. and R. Vanstaphorst consist?

Seventh interrogatory. Have you the means of making a correct account current between the plaintiffs and the defendants? if so, please annex one to your answer to this interrogatory, made out from your own knowledge.

778.

Eighth interrogatory. Do you know any other matter or thing material to the plaintiffs in this cause? if so, state the same as if specially interrogated thereto.

DAVID STEWART,
JOHN GLENN, } *For plaintiffs.*

CLAUDE D. CROMELIN,
F. W KARTHAUS.

The present is to certify, that after the examination of the 50 hogsheads Maryland tobacco, marked T, landed in the month of December, 1820, from the ship Massasoit, Capt. G. Ellis, and of the 50 hogsheads tobacco, marked T, [within a triangle,] landed in the month of June, 1820, from the ship Jason, Capt. W. Cox, both to the consignment of Messrs. N. and J. and R. Vanstaphorst, we have found the same worth 3 st., say three steivers, and declare that at this price parcels of similar quality are daily sold.

N. J. FABIUS,
H. E. DE LEEUW,
H. O. FABIUS,
H. MOSS,
N. STENBOUR.

Amsterdam, 31st Aug., 1824.

At the examination of a commission for the examination of witnesses, between Gerrit Schimmelpennick and Jan Adrian toe Laer, plaintiffs, and Josiah Turner and Philip Turner, surviving partners of William Turner, defendants, this paper writing was produced and shewn to the five witnesses hereinafter mentioned, and by them deposed unto at the time of their examination, before

CLAUDE D. CROMELIN,
F. W. KARTHAUS, } *Commissioners.*

Depositions of witnesses produced, sworn and examined on the fifth day of April, in the year of our Lord one thousand eight hundred and twenty-eight, at the house of Mr. Jan Fabius, doctor of laws, advocate and notary public, situated on the Keizers Gracht, No. 618, in the city of Amsterdam, in the province of North Holland, in the kingdom of the Netherlands, by virtue of a commission issued out of the circuit court of the United States for the fourth circuit, in and for the Maryland district, to us, or any three or two of us, Claude D. Cromelin, Frederick W. Karthaus, Thomas Parker, and Pierre Voute, directed; present Claude D. Cromelin and Frederick W. Karthaus, for the examination of witnesses in a certain cause there depending and at issue, between Gerrit Schimmelpennick and Jan Adrian toe Laer, plaintiffs, and Josiah Turner and Philip Turner, surviving partners of William Turner, defendants, on the part and behalf of the plaintiffs, as follows:

Hendrick Oostwald Fabius, of the city of Amsterdam, tobacco broker, residing on the Keizers Gracht, No. 324, aged 54 years and upwards, being produced, sworn and examined in behalf of the plaintiffs in the title of these depositions named, doth depose as follows, that is to say:

To the first interrogatory, this deponent saith, he knoweth not.

To the second interrogatory, this deponent saith, he knoweth not.

To the third interrogatory, this deponent saith, that the prices in the year one thousand eight hundred and twenty were as follows:

In January, from $8\frac{1}{2}$ steivers to $9\frac{1}{2}$
April, " 8 " 9
May, " 7 " 8
September, " 6 " 8
December, " $4\frac{13}{16}$ " $6\frac{1}{2}$

That in the year one thousand eight hundred and twenty-one, the prices were,

In January, from 5 steivers to $5\frac{1}{2}$
February, " $4\frac{1}{2}$ " 5
July, " 4 " 5
December, " $3\frac{1}{2}$ " $4\frac{1}{2}$

That in the year one thousand eight hundred and twenty-four, the prices were,

In January, from $3\frac{1}{2}$ steivers to 4
From February to December, " 3 " 4

And that it is probable some few good marks were sold at higher prices. That the depression was gradual from one thousand eight hundred and twenty to one thousand eight hundred and twenty-four, and that scarcely any alteration took place during one thousand eight hundred and twenty-four. That in one thousand eight hundred and twenty-four there were certain parcels which would not have produced more than $2\frac{3}{4}$ steivers, but being sold with others, of which the value was from $3\frac{1}{2}$ steivers to $3\frac{3}{4}$, the price of 3 steivers was maintained in the market.

To the fourth interrogatory, this deponent saith, no.

To the fifth interrogatory, this deponent saith, the document marked A was signed by him, after having duly examined the tobaccoes, for which examination he conceives himself to have been fully capable, from his experience in the article for upwards of forty years.

To the sixth interrogatory this deponent saith, he knoweth not.

To the seventh interrogatory this deponent saith, no.

To the eighth interrogatory this deponent saith, no.

H. O. FABIUS.

Harmanus Engelbertus de Leeuw, of the city of Amsterdam, dwelling in the Keizers Gracht, No. 696, aged sixty-four years and upwards, being produced, sworn and examined, in behalf of the plaintiffs in the title of these depositions named, doth depose as follows, that is to say:

To the first interrogatory this deponent saith, he knoweth not.

To the second interrogatory this deponent saith, he knoweth not.

To the third interrogatory this deponent saith, that the prices were, in one thousand eight hundred and twenty, as follows; from four steivers and a fraction to nine steivers and a half, which he further particularizes by saying, that the prices, in the month of January, were from eight steivers and a half to nine and a half; in the month of April, from eight to nine steivers; in the month of May, from seven to eight steivers; in the month of September, from six to eight steivers; in the month of November, from five and a half to six and a half steivers; and in the month of December, from four steivers and thirteen penningers to six and a half steivers; and that in the year one thousand eight hundred and twenty-one, the prices were from three and a half steivers to five and a half, namely, in January, from five to five and a half steivers; in February, from four and

779.

a half to five steivers; in July, from four to five steivers; and in December, from three and a half steivers to four and a quarter; and that in the year one thousand eight hundred and twenty-four, the prices were from three to four steivers, namely, in January, from three and a half steivers to four steivers; and in and from February to December, from three to four steivers.

To the fourth interrogatory this deponent saith, no.

To the fifth interrogatory this deponent saith, that the certificate now shewn to him, marked A, was by him signed after due examination of the tobacco, in which line of business he has been broker for upwards of forty-seven years.

To the sixth interrogatory this deponent saith, that he has not the means of answering with certainty.

To the seventh interrogatory this deponent saith, no.

To the eighth interrogatory this deponent saith, that it is highly probable that some few parcels of good marks may have been sold at higher prices than stated by him in his answer to the third interrogatory; and on the other hand, that he himself had certain parcels which could not have been sold for more than two and three quarters steivers, had they been put up to sale singly, but that by classing them with other parcels, which were worth from three and a half to three and three quarters steivers, the lots sold jointly for not less than three steivers; and further this deponent saith, that the inferior parcels were expressly combined to and sold with some better parcels for the purpose of maintaining the appearance of better prices in the market.

H. E. DE LEEUW.

Hermanus Mos, aged thirty-eight years and upwards, living on the Reguliers Gracht, No. 39, in the city of Amsterdam, broker in tobacco, being produced, sworn and examined in behalf of the plaintiffs in the title of these depositions named, doth depose as follows, that is to say:

To the first interrogatory this deponent saith, no.

To the second interrogatory this deponent saith, that he knoweth not.

To the third interrogatory this deponent saith, that the prices were, in one thousand eight hundred and twenty, from 4 and a fraction to 9½ steivers, that is to say:

In January,	from	8½	steivers to	9½
April,	"	8	"	9
May,	"	7	"	8
In September,	"	6	"	8
November,	"	5½	"	6½
December,	"	4 and a fraction to 6½.		

That in one thousand eight hundred and twenty-one the prices were from 3½ steivers to 5¼, that is to say:

In January,	from	5	steivers to	5½
February,	"	4½	"	5
July,	"	4	"	5
December,	"	3½	"	4¼

That in one thousand eight hundred and twenty-four the prices were from 3 to 4 steivers, that is to say:

In January, from 3½ to 4 steivers,

And from February to December, from 3 to 4 steivers.

To the fourth interrogatory this deponent saith, no.

To the fifth interrogatory this deponent saith, that the paper writing now shewn him, marked A, was by him signed after an examination of the tobaccoes, for which he was qualified by upwards of thirty years experience in the tobacco trade.

To the sixth interrogatory this deponent saith, that he cannot depose with certainty.

To the seventh interrogatory this deponent saith, no.

To the eighth interrogatory this deponent doth not depose.

H. MOS.

Nicholas Jacobus ten Bosch, tobacco broker, dwelling on the Keizers Gracht, No. 325, in the city of Amsterdam, aged twenty six years and upwards, being produced, sworn, and examined in behalf of the plaintiffs in the title of these depositions named, doth depose as follows, that is to say:

To the first interrogatory this deponent saith, no.

To the second interrogatory this deponent saith, that he knoweth not.

To the third interrogatory this deponent saith, that the prices in one thousand eight hundred and twenty, were from $4\frac{13}{16}$ steivers to $9\frac{1}{2}$ steivers; that in the year one thousand eight hundred and twenty-one, the prices were from $3\frac{1}{2}$ to $5\frac{1}{2}$ steivers; and that in one thousand eight hundred and twenty-four, the prices were from 3 to 4 steivers, that is to say, in January from $3\frac{1}{2}$ to 4 steivers, and from February to December 3 to 4.

To the fourth interrogatory this deponent saith, no.

To the fifth interrogatory this deponent saith, that he signed the certificate marked A, after having examined the tobaccoes.

To the sixth interrogatory this deponent saith, that he knoweth not.

To the seventh interrogatory this deponent saith, no.

To the eighth interrogatory this deponent saith, no.

N. J. TEN BOSCH.

Gerrit Boom, aged thirty-two years and upwards, dwelling in No. 261 Nieuwhyds Achterbergwal, in the city of Amsterdam, by profession merchants' clerk, being produced, sworn, and examined in behalf of the plaintiffs in the title of these depositions named, doth depose as follows, that is to say:

To the first interrogatory this deponent saith, that on the sixteenth of June, one thousand eight hundred and nineteen, three thousand dollars were advanced, and on the twentieth of the same month and year, two thousand dollars were advanced, and on the second of July, in the same year, eleven hundred and fifty dollars were advanced, on one hundred hogsheads of tobacco by the ship Harmony. On the seventeenth of November, one thousand eight hundred and nineteen, eighteen hundred dollars were advanced on thirty hogsheads of tobacco by the ship Harmony. On the seventeenth of December, one thousand eight hundred and nineteen, five thousand dollars were advanced on sixty hogsheads of tobacco by the ship Massasoit. On the seventeenth of May, one thousand eight hundred and twenty, three thousand and three hundred dollars were advanced on fifty hogsheads of tobacco by the ship Jason; and on the twenty-second of October, one thousand eight hundred and twenty, three thousand dollars were advanced on fifty hogsheads of tobacco by the ship Massasoit; and that all these sums were furnished by John C. Delprat, who was at these periods the agent of N. and J. and R. Vanstaphorst, in the United States. And this deponent

780.

further says, that in addition to these advanced sums, certain bills were drawn by the defendants and duly paid by the plaintiffs.

To the second interrogatory this deponent saith, that in the year one thousand eight hundred and nineteen, one hundred hogsheads, and thirty hogsheads were shipped by the Harmony; and that in one thousand eight hundred and twenty, sixty hogsheads were shipped by the Massasoit, and fifty hogsheads by the Jason, and fifty hogsheads by the Massasoit.

To the third interrogatory this deponent doth not depose.

To the fourth interrogatory this deponent saith, that he is a clerk of the plaintiffs; that he knows that the one hundred hogsheads by the ship Harmony were sold in the year one thousand eight hundred and nineteen, at nine steivers; that the thirty hogsheads by the same vessel were sold in the same year, at nine and three quarters steivers. That the sixty hogsheads by the ship Massasoit were sold in the year one thousand eight hundred and twenty-one, at four and a half steivers; and that the credits given to each and every of these sales was three months. That a copy of the account of sales of the three parcels first mentioned, which was given to the defendants at the time, he now holds in his hand, for the purpose of having the same annexed to this his deposition; and that the fifty hogsheads by the ship Jason, and the fifty hogsheads by the Massasoit, were estimated by the brokers at three steivers, in order to liquidate with the defendants, and that an account of sales was then made up, a copy of which this deponent holds in his hand, in order that it may be annexed to this his deposition. This deponent further saith, that as the fifty hogsheads by the ship Jason, and the fifty hogsheads by the Massasoit, realized four steivers in the month of August, one thousand eight hundred and twenty-five, he knows that the plaintiffs have no objection to annul the former sales, and that he holds in his hand a copy of the bill of sale, already mentioned as having taken place in August, 1825, for the purpose of annexing the same to this his deposition.

To the fifth interrogatory this deponent saith, that the document now shewn to him, marked A, was drawn up and signed in order to liquidate with Messrs. Turner & Co.

To the sixth interrogatory this deponent saith, that the firm of N. and J. and R. Vanstaphorst did consist of Messrs. Gerrit Schimmelpennick, R., J., Z., and Jan Adrian toe Laer, but that it now consists, and has consisted since the year one thousand eight hundred and twenty-five, of Mr. Jan Adrian toe Laer only.

To the seventh interrogatory this deponent saith, that he has the means of making a correct account current between the plaintiffs and the defendants, and that he has made a copy of the same, and specifically, as yearly sent to the defendants, and as sent to the defendants on the first of February, one thousand eight hundred and twenty-two, with a balance drawn out in favor of the plaintiffs, amounting to thirty-two thousand four hundred and sixty guilders and ninety-five cents, Dutch currency.

To the eighth interrogatory this deponent saith, that he knows the plaintiffs have many times urged the defendants to pay, but that the defendants never yet deigned to reply to the said importunities; and further this deponent doth not depose.

G. BOOM.

CLAUDE D. CROMELIN,
F. W. KARTHAUS.

ACCOUNT Sale of 100 *hogsheads Maryland tobacco, received per Harmony, Capt. M. Robinson, from Baltimore, for account of Messrs. Josiah Turner & Co., viz:*

T.				
1 a 100	100 hhds. weighing 79,364	Raffn. 4,310 lbs.		
	5,897	2 p. ct. 1,587		
	73,467 lbs.			
	8 p. ct. stems, 5,877			
	net 67,590, at 9 s.			f.30,415 10
		Deduct 1 per cent,		304 3
				30,111 7
	Charges.			
July 27,	For insurance as per note of this day,		976	
Sept. 1,	Freight at 52 6 per hhd. £262 10, at 38 7,	f.3,038 9		
	Agio 2 per cent.,	60 15		
		3,099 4		
	Primage 5 per cent.,	154 19		
	Post and harbor money,	19 7		
			3,273 10	
	Entry duties and permits,		810 3	
	Excise and weighers,		258 6	
	Boatage and laborage into the warehouse, &c.,		115 10	
	Drawing samples,		18 6	
	Cooperage and stripping,		103 9	
Nov. 15,	Delivering, &c.,		106 15	
	Raffaction mr. fees,		40 12	
	Brokerage at f.1,		100	
	Warehouse rent 3 months and petties,		113 19	

Nov. 15,	Fire insurance f. 32,000, ⅛ for 3 months, - - - - - -			40	
	Interest of our disbursements, at 5 per cent f. 976, from 27 July to 1 Sept., 36 days, - - - - - - - - - -		f. 4 18		
	By f. 5,555 4, from 1 Sept. to 15 Nov., 75 days, - - - -		57 17		
	401 6				
	5,956 10, 15 Nov. to 15 Feb., 1820, 92 days, - - - -		76 2		
				138 17	
				6,095 7	
	Commission, f. 30,111 7, a 2 per cent., - - - - - -			602 4	
	Guarantee, do. 1 " - - - - - -			301 2	
					6,998 13
	Value, 15 Feb., 1820, - - -				f. 23,112 14

19

781.

ACCOUNT Sale of 30 *hhds. Maryland tobacco, received per Harmony, Capt. M. Robinson, from Baltimore, for account of Messrs. Turner and Thompson, Newport, viz:*

TT						
No. 1 a 30	30 hhds weighing 24,096	Raffaction 1,210 lbs.				
	1,692	2 p. ct. gn. 482				
	22,404					
	8 p. ct. stems, 1,792					
	20,612 lbs. at 9¾ st.,				f.	10,048 7
	Deduct 1 per cent.,					100 10
						9,947 17
	Charges.					
Aug. 13,	For insurance 30 hhds. valued at $130 each, at par,				f.	9,750
	At 2½ per cent.,					243 15
	Commission ½ per cent.,					48 15
	Policy ½					10
						293
Sept. 1,	Freight at 52 6 per hhd. £78 15 at 38 7,			911 11		
	Agio 2 per cent.,			18 4		
				929 15		
	Primage 5 per cent.,			46 10		
	Post and harbor money,			5 16		
						982 1
	Entry duties and permits,					248 2
	Excise and weighers,					75 19
	Boatage and laborage into the warehouse,					35 6

	Drawing samples, - - - - - - - - - -			5	16
	Cooperage and stripping, - - - - - - - - -			31	13
Oct. 19,	Delivering, - - - - - - - - - -			34	7
	Raffaction mr. fees, - - - - - - - - - -			12	6
	Brokerage f.1, - - - - - - - - - -			30	
	Warehouse rent and petties, - - - - - - - - -			25	18
	Fire insurance, f.10,500, $\frac{1}{8}$ per cent for 3 months, - - - - -			13	2
	Interest at 5 per cent. on f 293 By 1,378 17 from 13 Aug. to 1 Sept. 19 days, - f.	15			
	1,671 17 from 1 Sept. to 19 Oct. 48 days, -	11	3		
	115 13				
	1,787 10 from 19 Oct. to 19 Jan., 1820, 92 days, -	22	17		
		34	15		
	Commission, f.9,947 17 a 2 per cent, - - - - - -			198	19
	Guarantee, " 1 " - - - - - -			99	10
					2,120 14
	Value, 19 Jan., 1820, - - -				f.7,827 3

91

7,827.

ACCOUNT Sale of 60 hhds. Maryland tobacco, received per Massasoit, Capt. G. Ellis, from Baltimore, for account of Messrs. Josiah Turner & Co. there.

T					
	60 hhds. Maryland tobacco weighing	26,100	Raffaction	1,187	
		1,709	2 per cent.	522	
		24,391			
	8 per cent. stems,	1,951			
		22,240 at 4½ st. per ½ lb.	- - -	-	f.10,098
			1 per cent, - -	-	101
					9,997
1820.		*Charges.*			
April 4,	For insurance as per note of this day, - - - - - -			496	
March 30,	Freight of 60 hhds. at 47 6, £142 10, a 39 8, - - -		f.1,695 15		
	Primage 5 per cent., - -		84 16		
	Post and harbor money, - -		10 12		
				1,791 3	
	Entry duties and permits, - - - - - - - -			496	
	Excise and weighers, - - - - - - - -			196 6	
	Boatage, laborage, &c., - - - - - - - -			72 13	
	Drawing samples, - - - - - - - -			10 10	
	Cooperage and stripping, - - - - - - - -			62 15	
June 5,	Paid average, gross £13,700, 14 s. per cent., - - - - -			95 18	
1821.					
Nov. 16,	Delivering, &c., - - - - - - - - -			72 18	
	Raffaction mr. fees, - - - - - - - - -			24 12	
	Brokerage f.1, - - - - - - - - -			60	
	Fire insurance f.18,000, 18 months, at ¾ per cent., - - - - -			135	

Warehouse rent and petties, - - - - - - - -				409 3	
Interest of our disbursements at 5 per cent. on					
f.486	from 4 April to 30 May, 1820, 56 days, - - -		f.3 17		
Add 2,598 18					
On 3,094 18	from 30 May to 5 June, 1820, 6 days, - - -		2 12		
Add 95 18					
On 3,190 16	from 5 June to 16 Nov., 1821, 529 days, - - -		234 9		
Add 701 13					
On 3,892 9	from 16 Nov. to 16 Feb. 1822, 92 days, - - -		49 15		
				290 13	
				4,183 2	
Commission on f.9,997, 2 per cent., - - - - - - -				199 19	
Guarantee, " 1 " - - - - - - -				99 19	
					4,483
	Value, 16 Feb., 1812, - - -			-	f.5,514

93

583.

ACCOUNT *Sale of 47 hhds. Maryland, 3 do. Virginia tobacco, received per the ship Jason, Capt. Wm. Cox, from Baltimore, for account of Messrs. Josiah Turner & Co. there, viz:*

T					
No. 1 a 50	50 hhds. weighing Neth'd. lb. 20,419 Raffn. 1,248,				
	1,656				
	18,763 lbs.				
	Stems, 8 per cent., 1,501				
	17,262 lbs. at 3 st. per ½ lb. - - -				f.5,178 12
	Deduct ½ per cent., - -				51 16
					5,126 16
1820.	*Charges.*				
June 7,	For insurance, as per note of this day, - - - - - - -			f.376	
July 8,	For freight of 47 hhds. a 50f. 2117 10				
	3 do. 65f. 9 15				
	127 5, 40½, - -		f.1,533 7		
	Primage 5 per cent., -		76 13		
	Post and harbor money, -		9 12		
				1,619 12	
	Entry duties and permits, - - - - - - - - -			302 14	
	Excise and weighers, - - - - - - - - -			120 3	
	Boatage, laborage and cooperage, - - - - - - - -			62 10	
	Drawing samples, - - - - - - - - - -			8 5	
	Cooperage and stripping, - - - - - - - - -			48 2	
1821.					
Nov. 13,	Proportion in the costs of advertising this parcel for public sale, printing catalogues, &c., as this sale was advertised to take place on 14 Nov., 1821, but afterwards countermanded, 20 Sept., 1821, - - - - - - - -			12 16	

1824.					
Aug. 16,	Delivering, &c., - - - - - - - - - -			49 6	
	Raffaction mr. fees, - - - - - - - - - -			20 8	
	Brokerage at f.1 per hhd., - - - - - - - - - -			50	
	For fire insurance, f.10,000, 17 months, ⅛ per cent. for 3 months, - -	70 17			
	do. 6,200, 33 months, do. do. - -	85 5			
				156 2	
	Warehouse rent, 4 years 2 months, and petties, - - - -			822 5	
	Interest of our disbursements at 5 per cent,				
	On f.376 from 17 June to 8 July, 1820, 31 days, - - -	f.1 12			
	Add 2,161 6				
	On 2,537 6 from 8 July, 1820, to 13 Nov., 1821, 493 days, - -	171 7			
	Add 12 16				
	On 2,550 02 from 13 Nov., 1821, to 16 Aug., 1824, 1,006 days, -	351 8			
	Add 1,098 1				
	On 3,648 3 from 16 Aug., 1824, to 16 Nov., 92 days, - -	16			
				570 7	
				f.4,218 10	
	Commission, £5,126 16 at 2 per cent, - - - - - -			102 11	
	Guarantee, do., at 1 per cent., - - - - - -			51 5	
					4,372 6
	Value 16 Nov., - - - -			-	f.754 10

68—4

25

784.

ACCOUNT Sale of 29 hhds. Maryland tobacco, received per the ship Massasoit, Capt. George Ellis, from Baltimore, for account of Messrs. Josiah Turner & Co. there, viz:

T K	29 hhds. weight Neth'ld. 11,137 lbs.	Raffn. 723 lbs.			
	946	2 p. ct. 223			
	10,191				
	Stems 8 per cent., 815				
	9,376 lbs. at 3 st. per ½ lb. - - - -				f.2,812 16
	Deduct 1 per cent., - -				28 3
1820.	*Charges.*				f.2,784 13
Nov. 7,	For insurance 29 hhds. £7,250, at 6 per cent., - - -		f.435		
	Commission ½ per cent., - -		36 5		
	Half policy, - - -		10		
				471 15	
Dec. 20,	Freight at 50 per hhd. £72 10, a 40 6, - - - -		f.880 17 8		
	Primage 5 per cent., - -		44 1		
	Post and harbor money - -		5 10		
				930 8 8	
	Entry duties and permits, - - - - - -		167 18		
	Excise and weighers, - - - - - -		71 5		
	Brokerage, laborage and cooperage, - - - -		36 7		
	Drawing samples, - - - - - - - -		4 18		
	Cooperage and stripping, - - - - - -		28 14		
1821. Nov. 13,	Proportion in the costs of advertising the parcel for public sale, printing catalogues, &c., as this sale was advertised to take place on 14th Nov., 1821, but afterwards countermanded by their letter, dated 20th Sept., 1821, - - - - - -		7 8		

1824. Aug. 16.	Delivering, &c., - - - - - - -		30 19		
	Raffaction mr. fees, - - - - - -		11 16		
	Brokerage at f. 1 per hhd., - - - - - -		29		
	Fire insurance, f. 6,000, 13 months at ⅛ per 3 months,	f. 32 10			
	Do. 3,500, 33 months do. do.,	48 2 8	80 12 8		
	Warehouse rent, 3 years 9 months, and petties, - - -		427 11		
				896 8 8	
	Interest of our disbursements at 5 per cent. per annum,				
	On f. 471 15 from 7 Nov. to 20 Dec., 1820, 43 days, -		f. 2 16		
	Add 1,239 10 8				
	On 1,711 5 8 from 20 Dec., 1820, to 13 Nov., 1821, 328 days, -		76 18		
	Add 7 8				
	On 1,718 13 8 from 13 Nov., 1821, to 16 Aug., 1824, 1,006 days, -		236 17		
	Add 579 18 8				
	On 2,298 12 from 16 Aug., 1824, to 16 Nov., 92 days, -		28 19		
				345 10	
				2,644 2	
	Commission, £2,784 13, a 2 per cent., - - - - - -			55 14	
	Guarantee, do., 1 per cent., - - - - - -			27 17	
					2,717 13
	Value, 16 Nov. 1824, - - -			-	f. 57

57

7851

ACCOUNT Sale of 21 *hhds. Maryland tobacco, received per the ship Massasoit, Capt. Geo. Ellis, from Baltimore, for account of Josiah Turner & Co. there, viz:*

T	21 hhds. weighing 8,170 lbs.	Raffn. 521 lbs.			
	684	2 p. ct. 163			
	7,486 lbs.				
	Stems, 8 p. ct. 599				
	Net 6,887 lbs. a 3 st. per ½ lb. - - - - -				f.2,066 2
	Deduct 1 per cent., - -				20 13
					2,045 9
1820.	*Charges.*				
Nov. 7,	For insurance 21 hhds., f.5,250, at 6 per cent., - - -		f.315		
	Commission ½ per cent., - -		26 5		
	Half policy, - - -		10		
				341 15	
Dec. 20,	Freight 21 hhds. at 50f., £52 10, a 40 6, - - - -		637 17 8		
	Primage 5 per cent., - -		31 18		
	Post and harbor money, -		4		
				673 15 8	
	Entry duties and permits, - - - - - - - -			118 18	
	Excise and weighers, - - - - - - - -			52 2	
	Brokerage, laborage and cooperage, - - - - - -			24 16	
	Drawing samples, - - - - - - - - -			3 7	
	Cooperage and stripping, - - - - - - - -			20 9	
1821.					
Nov. 13,	Proportion in the costs of advertising this parcel for public sale, printing catalogues, &c., as this sale was advertised to take place on 14 Nov., 1821, but afterwards countermanded by their letter, dated 20 Sept., 1821, - - - -			5 8	

1824. Aug. 16,	Delivering, &c., - - - - - - - - - -			19 11	
	Raffraction mr. fees, - - - - - - - - -			8 12	
	Brokerage at f. 1, - - - - - - - - - -			21	
	Fire insurance, f. 4,000, 13 months a $\frac{1}{8}$ per cent., for 3 months, -	f. 21 13			
	do. 2,500, 33 do. do. do., -	34 7 8			
				56	8
	Warehouse rent, 3 years 9 months, and petties, - - - - -			307 5	
	For interest of our disbursements at 5 per cent.,				
	On f. 341 15 from 7 Nov. to 20 Dec., 1820, 43 days, - -	f. 2			
	Add 893 7 8				
	On 1,235 2 8 from 20 Dec., 1820, to 13 Nov., 1821, 328 days, -	55 10			
	Add 5 8				
	On 1,240 10 8 from 13 Nov., 1821, to 16 Aug., 1824, 1006 days, -	170 19			
	Add, 412 8 8				
	On 1,652 19 from 16 Aug., 1824, to 16 Nov., 92 days, - -	20 17			
				249 6	
				1,902 5	
	Commission, f. 2,045 9, at 2 per cent., - - - - - -			40 18	
	Guarantee, do. 1 per cent., - - - - - -			20 9	
					1,963 12
	Value, 16 Nov., 1824, - - -			-	f. 81 17

29

786.

ACCOUNT Sale of 100 *hhds. Maryland tobacco, whereof* 50 *hhds. were received per the ship Jason, Capt. Wm. Cox, and* 50 *hhds. per the ship Massasoit, Capt. Geo. Ellis, from Baltimore, for account of Jos. Turner & Co. there, viz:*

	Above 100 hhds are together sold on the 12th Aug., 1825, to Messrs. O. G. Gorter & Co., weighing 33,405 lbs. net, 4 st. per ½ lb. - - - - - -		f. 13,362
	Deduct 1 per cent., - - -		133 62
			13,228 38
1820.	*Charges on* 50 *hhds. per Jason.* T		
June 7,	For insurance, as per note of this day, - - - - -	f. 376	
	Freight on 47 hhds. at 50f. stg. £117 10		
	3 do. 65f. 9 15		
	£127 5 at 40½, - -	1,533 35	
	Primage 5 per cent., - -	76 65	
	Post and harbor money, - - - - - -	9 60	
	Entry, duties and permits, - - - - - -	302 70	
	Excise and weighers, - - - - - -	120 15	
	Boatage, laborage and cooperage, - - - - -	62 50	
	Drawing samples, - - - - - - -	8 25	
	Cooperage and stripping, - - - - - -	48 10	
			f. 2,537 30
	Charges on 50 *hhds. per Massasoit, whereof* 21 *hhds.* T *and* 29 *hhds.*	T K.	
Nov. 7,	For insurance of 21 hhds. f. 5,250		
	do. 29 do. 7,250		
	12,500 at 6 per cent., - - -	f. 750	
	Commissions, ½ per cent., - -	62 50	

	Policy, - - - -		1	
			813 50	
Dec. 20,	Freight, 21 hhds. a 50f. £52 10			
	at 40 6, - - - - -	637 87½		
	Primage 5 per cent., - -	31 90		
	Post and harbor money, - - - - -	4		
			673 77½	
	For freight 29 hhds. at 50f. per hhd. £72 10, at 40 6 -	880 87½		
	Primage, - - -	44 05		
	Post and harbor money, - - - - -	5 50		
			930 42½	
	Entry duties and permits, - - - - - -		286 80	
	Excise and weighers, - - - - - -		123 35	
	Boatage, laborage and cooperage, - - - - -		61 15	
	Drawing samples, - - - - - - -		8 25	
	Cooperage and stripping, - - - - - -		49 15	
				2,946 40
1821.	*Charges on the* 100 *hhds. together.*			
Nov. 13	Costs of advertising the 100 hhds. for public sale, printing catalogues, &c., as the sale was advertised to take place on the 14th Nov., 1821, but afterwards countermanded by their letter dated 20 September, 1821, - - - -			25 60
1825.				
Aug. 12,	Delivering, &c., - - - - - - - - - -			99 80
	Raffaction mr. fees, - - - - - - - - -			40 80
	Brokerage, f.1 per hhd., - - - - - - - -			100
	Fire insurance on f.10,000, 17 months, ⅛ per cent., for 3 months, -		70 85	
	10,000, 13 months, do. do., -		54 15	
	12,200, 45 months, do. do., -		228 75	
				353 75

ACCOUNT—Continued.

1825.				
Aug. 12,	Warehouse rent on 50 hhds. per Jason, 5 years 3 months, and petties, - -		1,036 25	
	Do. on 50 hhds. per Massasoit, 4 years and 10 months, and petties, -		946 82	
	Interest of our disbursements at 5 per cent.,			
	On f. 376 from 7 June to 8 July, 1820, 31 days, - -	1 62		
	Add 2,161 30			
	On 2,537 30 from 8 July to 7 Nov., 1820, 122 days, - -	42 99		
	Add 813 50			
	On 3,350 80 from 7 Nov. to 20 Dec., 1820, 43 days, - -	20 01		
	Add 2,132 90			
	On 5,483 70 from 20 Dec. to 13 Nov., 1821, 328 days, -	249 81		
	Add 25 60			
	On 5,509 30 from 13 Nov., 1821, to 12 Aug. 1825, 1,367 days,	1,045 94		
	Add 2,577 42			
	On 8,086 72 from 12 Aug., 1825, to 26 Nov., 1825, 106 days,	119 04		
			1,479 41	
			9,566 13	
	Commission on f. 13,228 28, at 2 per cent., - - - - -		264 57	
	Guarantee do. 1 do., - - - - -		132 28	
				9,962 98
	Value 26 Nov., 1825, - - -		-	£3,265 40

32

Dr. *Messrs. Josiah Turner & Co., at Baltimore, in account current with N. & J. & R. Vanstaphorst.* Cr.

1822.			1822.		
Feb. 1,	To balance of former account, - -	f.32,460 95	Feb. 16,	By net proceeds of 60 hhds. of tobacco, per Massasoit, - - - - -	f.5,514
1825.				The same of 100 hhds. of tobacco, whereof 50	
Nov. 26,	Interest at 5 per cent.,			per ship Jason and 50 per Massasoit, -	3,265 40
	Dr f.32,460 95, from 1 Feb. to 16 Feb., 1822, 16 days, - - f.72 13			Balance due to N. and J. and R. Vanstaphorst, reserving the further interest from this day,	28,911 04
	Cr. 5,514, - -				
	Dr. f.26,946, 16 Feb. to 26 Nov., 1825,—1,378, - - - 5,157 36				
		5,229 49			
		f.37,690 44			f.37,690 44
	Amsterdam, 26 *November*, 1825.	E. E.			

68 — 83

83

Dr. *Messrs. Josiah Turner & Co., Baltimore, in account current with N. & J. & R. Vanstaphorst.* Cr.

1824.			1822.		
Feb. 1,	To balance of former account, - -	f.30,915 4	Jan 31,	By balance due to us, - - - -	f.32,460 19
1822.					
Jan. 31,	To interest at 5 per cent., On f.30,915 4, from 1 Feb., 1821, to 31 Jan., 1822, 365 days, - - -	1,545 15			
		f.32,460 19			f.32,460 19
	Amsterdam, 31 *January*, 1822.	E. E.			

'88.

DR. *Messrs. Josiah Turner and Co., Chaptico, Maryland, in account current with N. & J. & R. Vanstaphorst.* CR.

1819.			1820.		
Sept. 16,	To cash advanced you by J. C. Delprat, on 16 June, $3,000, at 39½ c. - -	f.7,594 18	Jan. 31,	By balance due to us, transferred to your debit in new account, - - - -	f.20,520 6
" 20,	To cash advanced you by J. C. Delprat, on 20 June, $2.000; at 39½ c. - - -	5,063 6			
Oct. 2,	To cash advanced you by J. C. Delprat, on 2 July, $1,150, at 39½ c. - - -	2,911 8			
1820.					
Jan. 3,	To cash advanced you by J. C. Delprat, on 17 Nov., $1,800, at 39 c. - - ¼ per cent. brokerage, -	4,627 5			
" 31,	Interest as per note, - - - - -	304 19			
	Postages, - - - - - -	18 10			
		f 20,520 6			f.20,520 6
	AMSTERDAM, 31 *January*, 1820.	E. E.			

Note of Interest at 5 per cent.

DR.		Days.	
	f.7,594 18 from 16 Sept. to 20 Sept., 1819, 4	4	4
	5,063 6		
	12,658 4 from 20 Sept. to 2 Oct., 1819, - 12	12	21 2
	2,911 8		
	15,569 12 from 2 Oct. to 3 Jan., 1820, - 93	93	201 2
	4,627 5		
	20,196 17 from 3 Jan. to 31 Jan., 1820, - 28	28	78 11
	To your debit in account current, -	-	304 19

DR. *Messrs. Josiah Turner & Co., Chaptico, Maryland, in account current with N. & J. & R. Vanstaphorst.* CR.

1820.			1820.		
Feb. 1,	To balance of former account, - -	f.20,520 6	Feb. 15,	By nett proceeds 100 hhds. Maryland tobacco, per Harmony, - - - -	f.23,112 14
" 17,	Cash advanced by J. C. Delprat on the 17th Dec., which advance is charged in this account, as per letter of J. C. Delprat, at the exchange between London and Amsterdam on this day. $2,000 / 3,000		April 4,	The same, 30 hhds. Maryland tobacco, belonging to Turner and Thompson, - -	7,827 3
	$5,000, or £1,125 sterling at 39 6, f.13,331 5		1821.		
	Commission of our bankers, ½ p.c. 66 13		Jan. 31,	Balance due, as transferred to your debit in new account, - - - - -	30,915 4
	Brokerage ¼ per cent., - - 33 04				
		13,431 2			
April 7,	Your draft, Baltimore, 7 March, 3 days sight, favor of J. C. Delprat, - - - -	10,000			
" 17,	The same, advanced you by J. C. Delprat, $3,300, at 38 c., ¼ per cent. for brokerage,	8,705 18			
Oct. 22,	Advanced by J. C. Delprat $3,000, at 37½ c., ¼ per cent. brokerage, - - - -	8,020			
1821.					
Jan. 31,	Interest as per note, - - - - -	1,081			
	Our commission and guarantee on £1,125, f.13,331 5, ½ per cent., - - -	66 13			
	Brokerage on the same ¾ per cent. per mille. -	10			
	Postages, - - - - - -	20 16			
		f.61,855 1			f.60,855 1

AMSTERDAM, 31 *January*, 1821. E. E.

85

789.

Messrs. Turner & Co. their Account of Interest.

			Days.	Dr. 5 p. c.	Cr. 4 p. c.
Dr.	20,520	from 1 Feb. to 15 Feb, 1820, - - - - - - - -	15	42 15	
Cr.	23,112 14				
"	2,519 14	from 15 Feb. to 17 Feb, 1820, - - - - - - - -	2	-	11
Dr.	13,431 2				
	10,838 8	from 17 Feb. to 4 April, 1820, - - - - - - - -	47	70 16	
Cr.	7,827 3				
Dr.	3,011 5	from 4 April to 7 April, 1820, - - - - - - - -	4	1 5	
"	10,000				
"	13,011 5	from 7 April to 17 May, 1820, - - - - - - - -	40	72 7	
"	8,705 18				
"	21,717 3	from 17 May to 22 Oct., 1820, - - - - - - - -	158	476 11	
"	8,020				
"	29,737 3	from 22 Oct., 1820, to 31 Jan., 1821, - - - - - - - -	101	417 3	
		Balance carried to your debit in account current, - - -	-	-	1,080 6
				f.10,80 17	f.1,080 17
	Amsterdam, 31 *January*, 1821.			E. E.	

790.

And thereupon the defendants, to maintain the issue on their part, gave in evidence to the jury, that William Turner, the person mentioned in the declaration in this cause, died on the 6th day of January, 1819; that the said William was formerly a partner with the said Josiah and Philip, under the firm of Josiah Turner and Company, but that the said copartnership was dissolved in October, 1817, and that a new copartnership was formed between the said Josiah and Philip in 1820, under the firm of Josiah Turner and Company.

Whereupon the defendants, by their counsel, prayed the opinion of the court and their direction to the jury, that the plaintiffs are not entitled to recover, because the defendants are sued as surviving partners of William Turner, whereas the proof is, that William Turner had departed this life some months before the first transaction took place between the plaintiffs and defendants, and therefore could not constitute one of the firm of the defendants at any time during the transactions in question, and that therefore there is a variance between the contract declared on and the contract given in evidence; upon which prayer the opinions of the judges were opposed, and the same, on motion of the plaintiffs, by their counsel, is hereby certified to the Supreme Court, agreeably to the act of Congress in such case made and provided.

And the court being further of opinion, that further proceedings could not be had in the said cause, without prejudice to the merits of the same, did order that the jury empannelled as aforesaid to try said cause, be discharged from giving any verdict therein.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I hereunto subscribe my name and affix the seal of the said circuit court, this thirty-first day of July, in the year of our Lord one thousand eight hundred and twenty-nine.

PHILIP MOORE, *Clk. Circ't. Ct.* [SEAL.]